Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/13107/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On November 11, 2014	**On November 17, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

MRS VICTORIA YEMISI AJAYI
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Bandegani, Counsel, instructed by Brent Law Centre
For the Respondent: Mrs Holmes (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born October 8, 1950, is a citizen of Nigeria. The appellant entered the United Kingdom as a visitor on January 17, 2012 for six months. On June 11, 2012 she made an application to vary her leave to enter or remain on the basis of her relationship with her daughter but the respondent refused this application and took a decision to remove under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and on April 7, 2014 and July 16, 2014 Judge of the First Tier Tribunal Easterman (hereinafter referred to as the "FtTJ") heard her appeal and in determination promulgated on August 22, 2014 he refused her claim for asylum, humanitarian protection and under the Human Rights Convention.

3. The appellant lodged grounds of appeal on September 2, 2014 and on October 3, 2014 Judge of the First-tier Tribunal Osborne gave permission to appeal on the basis the FtTJ may have erred firstly by hearing the appellant's asylum appeal when a decision had not been taken by respondent and secondly, by not giving proper consideration to the issue of relocation.

4. The appellant was in attendance at the hearing.

PRELIMINARY ISSUES

5. Mr Bandegani accepted the FtTJ had not erred:

    a. By hearing the appellant's asylum/humanitarian protection claims.

    b. In refusing the appellant's article 8 claim.

6. Mr Bandegani indicated that he would be arguing the FtTJ had erred because his approach to the issue of internal relocation was flawed.

SUBMISSIONS ON ERROR OF LAW

7. Mr Bandegani adopted the grounds of appeal in so far as they were still relevant and submitted:

    a. The FtTJ in a detailed determination found the appellant and her daughter to be credible witnesses in various paragraphs of his determination.

    b. The respondent's behaviour during these proceedings was disgraceful and this was a matter recognised by the FtTJ at paragraphs [100] to [102] of his determination.

    c. Due to the respondent's behaviour the appellant was only aware of the respondent's response to her case after she had given evidence.

    d. The FTTJ made factual errors and in particular he erred by finding:

i. The appellant could return to live in Port Harcourt when she had never lived there.

ii. The appellant's husband church was not active in Ibadan. New evidence confirms that there are at least ten branches of the church in Ibadan alone. The respondent also refused to engage and failed to bring to the FtTJ's attention policy document on relocation. Even though the evidence was not before the FtTJ it is arguable there would be unfairness if the evidence as not taken into account following the Upper Tribunal decision in MM Unfairness; E & R) Sudan [2014] UKUT 00105. His finding at paragraph [115] is unsustainable.

iii. The appellant could live with family when her evidence was she was unable to and he had found her to be a credible witness.

iv. Failed to have regard to what happened to the appellant's sister in Nigeria as it was relevant to the risk on return for the appellant.

e. The FtTJ's assessment of risk on return was defective as he did not give full consideration to whether returning the appellant would be unduly harsh. The FtTJ only considered her medical condition when assessing whether it would be unduly harsh to return her and fails to state why relocation elsewhere would be reasonable.

8. Mrs Holmes opposed the grounds of appeal and submitted:

a. The determination was detailed and considered and all of the findings were reasoned and open to him.

b. Whilst the FtTJ may have inadvertently referred to Port Harcourt this did not alter his findings that it was open to the appellant to return and live in Nigeria with family regardless of where the family lived or elsewhere. At paragraph [116] the FtTJ commented the appellant was able to live with her sister and brother-in-law without suffering any problems. The fact he may have mistakenly mentioned Port Harcourt did not alter his finding she was able to live elsewhere safely and out of reach of her husband.

c. The FtTJ dealt with the case on the evidence and facts as presented. The findings he made about the expert's evidence in paragraph [115] were open to him on the evidence he had before him.

d. There is no evidence that the appellant was mendacious because the FtTJ accepted her account and the expert failed to provide evidence that demonstrated the appellant's husband was likely to trouble her where her sister lived. The case of MM has no bearing on the facts of this case.

e. The FtTJ was entitled to find she could return and live with her sister and her brother-in-law.

f. The FtTJ's findings in paragraphs [126] to [127] were again open to him because he was considering whether the appellant had suffered persecution or would if returned. He was not concerned with any problems the appellant's sister may have had.

g. The general submissions on special care to be taken in certain gender cases apply to any case. However, the FtTJ made clear findings that the appellant could return to where her sister lived and where she had other family. The fact he found her to be an honest witness about certain aspects of her account did not extend to her claim about the reach her husband may have, as evidenced by his findings in paragraph [116].

9. Mr Bandegani responded to these submissions and stated:

a. The FtTJ mistakenly referred to Port Harcourt and this must be a material error as they are different locations.

b. The new evidence demonstrates that Ibadan is a place where the church does have a strong presence. Her evidence was she only stayed there for a few weeks and left when there was no possibility living there permanently with other family members.

c. She is unable to live with any family because one daughter lives in a house owned by her ex husband and the other two daughters live together and one of those daughters also thinks the appellant is a witch. The appellant's sister suffered persecution for being suspected of being a witch and so it would be unsafe for her to return to a place where the father had connections.

10. Having heard their submissions I reserved my decision. I agreed with the representatives that in the event I found an error in law I would bring the matter before me for possible oral evidence and further submissions in light of the fact the FtTJ was unrepresented at the original hearing.

ASSESMENT OF ERROR OF LAW

11. When the grounds of appeal were submitted on September 2, 2014 the appellant submitted:

    a. The FtTJ erred in failing to take into account the appellant's health problems for the purpose of paragraph 317 HC 395.

    b. The FtTJ acted unfairly by dealing with the appellant's asylum claim when the respondent had failed to make a decision herself.

    c. The FtTJ accepted the appellant fell into the Refugee Convention but then drew a distinction between the appellant's accusers and others and this amounted to a material error because it is accepted that those labelled witches face persecution.

    d. The FtTJ failed to properly consider the influence and reach of the Pentecostal fellowship of Nigeria and other churches have.

    e. The FtTJ was wrong to find the appellant could safely live in Nigeria with her sister because it was the appellant's case that she was unable to do so.

    f. The FtTJ erred by finding the appellant once lived in Port Harcourt because the sister lived in Ibadan and the appellant only stayed with her for five weeks.

    g. The FtTJ erred by not having regard to her accuser's previous conduct.

12. Judge of the First-Tier Tribunal Osborne considered those grounds and in paragraph [3] of his grant of permission he found it was arguable

    a. The FtTJ had erred by hearing her asylum claim prior to the respondent making a decision about it.

    b. The FtTJ erred by finding the appellant could go and live in Port Harcourt or Ibadan when he had accepted those accused of witchcraft in a community were at risk of serious harm.

    c. Although permission was given on these two grounds all grounds were arguable.

13. At the hearing before me Mr Bandegani accepted the FtTJ was entitled to hear the asylum claim as it had been raised in the grounds of appeal.

He accepted the FtTJ would have erred if he had not dealt with that aspect of the claim.

14. I have carefully considered the FtTJ's determination, which is extremely detailed and runs to some thirty-two pages. It is apparent from the determination that the FtTJ was wholly unimpressed with the respondent's behaviour both before and during the hearing. He initially heard the appeal on October 2, 2013 and he adjourned the case with lengthy case-management directions. The matter came back before him on November 29, 2013 and he further adjourned the case as the respondent had not received them and the matter came back before him on January 21, 2014. He then adjourned the case until April 7, 2014 for a hearing but on that date further directions were issued for a final hearing on June 16, 2014. Due to the respondent's failure to co-operate and to ensure a fair hearing he recorded the respondent's oral submissions and then sent them out to the appellant affording her an opportunity to submit either written or oral submissions.

15. The FtTJ ensured the appellant received a fair hearing by adjourning matters until such time he felt he had sufficient information from both parties that would enable him to make a decision. Whilst the respondent's conduct clearly left a lot to be desired the FtTJ cannot be criticised for the manner in which he approached this appeal.

16. The FtTJ set out the relevant law in so far as it applied to the case between paragraphs [20] and [28]. He then set out the evidence and made it clear that he took into account all of the evidence including his record of proceedings.

17. In setting out the evidence the FtTJ referred to what happened in Nigeria right up until the time she returned to the United Kingdom and this included the appellant's account of what happened to her elder sister and how one of her daughter's now believes that she is a witch. He noted her claim that her husband was a well-known man in Ado-Ekiti and that there is a large fellowship of pastors and that about thirty churches come under a zonal pastor and that her husband was a zonal pastor. The appellant told the FtTJ that lots of people were aware of the accusations that had been made against her.

18. The FtTJ also clarified with her why she could not live with family members and she gave the FtTJ reasons why she could not stay with any family members. She also explained why she felt unable to go and live in a larger city where she was unknown. At paragraph [58] of her determination the FtTJ referred to her living with her sister in Ibadan.

19. The FtTJ also recorded in detail the appellant's daughter's evidence including the fact she corroborated her mother's account about her father's role and influence as well as her mother's medical condition.

20. At paragraph [66] the FtTJ recorded that the daughter's brother-in-law lived in Port Harcourt and that Port Harcourt was also not a safe place for her. He also made reference to what he perceived were the important extracts from the eleven pages of submissions.

21. AT paragraphs [79] to [82] he referred to an expert and medical report and made it clear the fact he did not set out all of the evidence did not mean he had not considered the same.

22. I am satisfied the FtTJ was fully au fait with the elements of the appellant's claim and had spent a considerable period of time carefully setting out the claim. The grounds of appeal do not challenge at all his résumé of the claim although there are some specific challenges about aspects of his assessment. That assessment of the evidence commences at paragraph [99] and concludes at paragraph [132].

23. The FtTJ made it clear at paragraph [99] that he considered the appellant's claim against the background evidence that the appellant had submitted. He made it clear both he and the appellant were hindered by the respondent's behaviour and he is probably as blunt in his criticism of the respondent as I have ever seen in a determination. Due the respondent's failing he made it clear that he would have to make findings on every element of the appellant's claim.

24. In respect of her asylum and article 3 claims he accepted at paragraph [109] of his determination that "those accused of witchcraft in a community in Nigeria are potentially likely to suffer serious harm".

25. It is in paragraphs [110] and [116] that one of Mr Bandegani's grounds is founded because the FtTJ stated the appellant was able to go and live with her brother-in-law. However, it is my understanding that the FtTJ found the appellant's sister lived in Ibadan (see paragraph [58]) and her daughter's brother-in-law lived in Port Harcourt (paragraph [66]).

26. Mrs Holmes submission was that even if the FtTJ had erred in mixing up the place names this was not a material error because his finding was she could go and live in with her sister. I agree with Mrs Holmes's submission on this aspect of the appeal namely that even if the FtTJ mixed up the place names this did not make any difference to his finding that she could safely live with the sister she had stayed with for a period of time. Whether that was Ibaban or Port Harcourt made no difference. It was his finding she could live safely with her sister that was relevant.

27. At paragraph [111] of his determination the FtTJ found there was no generalised risk to the appellant if she went to live in areas where family members lived safely. In assessing whether she could return he took

into account at paragraph [112] her account about why she could not live in properties but he rejected her overall claim partially because he did not accept some of the conclusions given by the psychiatric and country experts.

28. The FtTJ accepted at paragraph [116] the appellant and her daughter were "honest" but he did not accept the additional evidence from Dr Hoskins that large swathes of Nigeria were not open to her.

29. The FtTJ was not persuaded that she could not live safely in large swathes of Nigeria and whilst he may have incorrectly said her sister lived in Port Harcourt this did not detract from the point he was making namely that he found she had lived safely with her sister for a period of time and the family had not had to flee from the father because of it. I find any mistake as to the place is not material as the FtTJ made it clear with whom he found she had lived safely.

30. At paragraph [117] the FtTJ found that she would be at risk from her husband if she stayed in one of his properties or with family who perceived her to be at risk but he rejected her claim that the she would be at risk anywhere else.

31. His finding on that point is not perverse or inconsistent with his assessment of the expert and background evidence. The fact he found the witness and appellant to be credible does not mean that she would be unable to return to areas where there was no such risk.

32. Mr Bandegani invited me to find the FtTJ had made a material error of fact. He sought to adduce new evidence that demonstrated that in Ibadan there were a large number of churches connected to the same religion the appellant's husband followed. However, this submission misses the point of the FtTJ's finding namely that there were areas of Nigeria she could return to as long as those areas did not contain the risk identified in paragraph [117] of his determination. It did not matter if the place was Ibadan or somewhere else and the new evidence did nothing to alter the FtTJ's finding on the evidence. If return was solely to a place where his church was active or he lived then she would be at risk but that is not what the FtTJ concluded in paragraphs [117] or [120]. The FtTJ used a simple example of where she could live and it is that principle I have to consider. The FtTJ was not persuaded there was nowhere in Nigeria she could safely live. He found there was support available for her albeit it may not allow her to live to the standard she wanted.

33. Mr Bandegani went onto submit that the FtTJ did not consider the issue of internal relocation in the context of whether it was unduly harsh. I accept that the FtTJ only refers in paragraph [122] to whether internal relocation was unduly harsh but I am satisfied that the FtTJ had

concluded generally it was reasonable and not unduly harsh for her to relocate for the reasons he gave in paragraphs [117] and [121] and that in paragraph [122] he went onto consider whether her medical circumstances would make a difference. He considered her circumstances and made findings that drew him to the conclusion that her medical condition would not make relocation unduly harsh. That finding was clearly open to him.

34. Finally, the fact the sister may also have suffered for being a witch did not alter his finding that if she returned to an area where he had no influence or was not present she would not experience any problems.

35. This was an extremely carefully prepared determination and I find no error in law.

DECISION

36. There was no material error of law. I uphold the original decision and dismiss all the appeals before me.

37. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier Tribunal and I see no reason to amend that Order now.

Signed: Dated: **November 17, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

The appeal was dismissed and no fee award can be made.

Signed: Dated: **November 17, 2014**

Deputy Upper Tribunal Judge Alis